

1 1. The withdrawal of land entered as county forest land under s. 28.11 and any
2 modification of, or amendment to, a county forest land use plan necessitated by the
3 withdrawal of the land.

4 2. The withdrawal of land entered as forest cropland under s. 77.10.

5 3. The withdrawal of land designated as managed forest land under subch. VI
6 of ch. 77 and any modification of, or amendment to, a managed forest land
7 management plan necessitated by the withdrawal of the land.

8 4. The transfer of land for which amounts were awarded by the department,
9 including under s. 23.09 (17m), 26.38, 28.11 (5r), or 77.895, to fund the acquisition
10 of, or to fund activities conducted on, forest land and any modification of, or
11 amendment to, a forest stewardship management plan or other plan necessitated by
12 the transfer of the land.

13 (d) The public notice, informational hearing, and comment provisions in s.
14 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and
15 the provisions for review in s. 295.77 (1) and (2) apply to an environmental impact
16 statement prepared under this subsection. If the department revises and
17 redistributes an environmental impact statement or portion of an environmental
18 impact statement prepared under this subsection, the department shall distribute
19 the environmental impact statement or portion of the environmental impact
20 statement as provided in s. 295.57, but the period for public comment is 30 days,
21 rather than 45 days.

22 (e) The department shall conduct its environmental review process jointly with
23 any federal or local agency that consents to a joint environmental review process.
24 The department may adopt any environmental analysis prepared by another state
25 agency or by a federal or local agency. The department may enter into a written

1 agreement with any of those agencies that have a major responsibility related to or
2 that are significantly affected by the proposed mining. In the written agreement, the
3 parties shall define the responsibility of each agency in the development of a single
4 environmental impact statement on the proposed mining and outline the procedures
5 to be used in the regulatory process. The department shall be the lead agency for any
6 environmental review process involving other state agencies. To the extent that any
7 federal or local agency's environmental review process conflicts with the provisions
8 of this section or s. 295.57, the department shall follow the provisions of this section
9 and s. 295.57 and may only coordinate its environmental review to the extent
10 consistent with the provisions of this section and s. 295.57. The department shall
11 comment on any federal agency's environmental assessment or environmental
12 impact statement associated with a mining project in accordance with s. NR 150.30,
13 Wis. Adm. Code.

14 (5) RELATIONSHIP TO OTHER LAWS. This section and s. 295.57 govern the
15 department's obligations under ss. 1.11 and 1.12 with respect to a mining project.
16 Sections 23.11 (5) and 23.40 and ss. NR 2.085, 2.09, and 2.157, Wis. Adm. Code, do
17 not apply with respect to a mining project. The rest of ch. NR 2, Wis. Adm. Code, only
18 applies with respect to a mining project to the extent that it does not conflict with this
19 section and s. 295.57. Sections NR 150.24 and 150.25, Wis. Adm. Code, do not apply
20 with respect to a mining project. The rest of ch. 150, Wis. Adm. Code, only applies
21 with respect to a mining project to the extent that it does not conflict with this section
22 and s. 295.57.

23 **295.56 Exemptions.** (1) The department may grant an exemption, as
24 provided in this section, from any of the requirements of this subchapter applicable
25 to any of the following:

1 (a) A mining permit application, including the mining plan, reclamation plan,
2 and mining waste site feasibility study and plan of operation.

3 (b) A mining permit.

4 (c) Any other approval.

5 (2) (a) An applicant shall submit a request for an exemption in writing and
6 shall describe the grounds for the exemption and provide documentation identifying
7 the conditions requiring the exemption, the reasons for the exemption, and the
8 reasonableness of the exemption.

9 (b) An applicant may obtain an exemption only if the applicant submits the
10 request no later than the 180th day after the application for the mining permit is
11 administratively complete under s. 295.57 (2), unless the condition that is the basis
12 for the requested exemption is not known to the applicant before that day, in which
13 case the deadline is extended to the 20th day before the deadline under s. 295.57 (7)
14 (a).

15 (c) The department shall issue a decision on a request for an exemption no later
16 than the 15th day after the day on which it received the request under par. (a).
17 Subject to par. (b) and except as provided in par. (d), the department shall grant the
18 exemption if it is consistent with the purposes of this subchapter and will not violate
19 any applicable environmental law outside of this subchapter and if one of the
20 following applies:

- 21 1. The exemption will not result in significant adverse environmental impacts.
- 22 2. The exemption will result in significant adverse environmental impacts, but
23 the applicant will offset those impacts through a mitigation program, as provided in
24 s. 295.60 (8), through the measures provided in s. 295.605, or through the
25 conservation measures provided in s. 295.61.

1 (d) 1. The department shall deny a request for an exemption if granting the
2 exemption would violate federal law.

3 2. If federal law imposes a standard for an exemption that differs from the
4 standard in par. (c) and that cannot be modified by state law, and if that standard has
5 been approved by the federal government for use by the state through a delegation
6 agreement, federally approved state implementation plan, or other program
7 approval, then the department shall determine whether to grant the request for the
8 exemption using the federal standard.

9 **295.57 Application procedure.** (1) SUBMISSION. (a) An applicant shall
10 submit the application for a mining permit as provided in s. 295.47.

11 (b) The department shall protect as confidential any information, other than
12 effluent data, contained in an application for a mining permit, upon a showing that
13 the information is entitled to protection as a trade secret, as defined in s. 134.90 (1)
14 (c), and any information relating to production or sales figures or to processes or
15 production unique to the applicant or that would tend to adversely affect the
16 competitive position of the applicant if made public.

17 (2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS. (a) The department shall
18 review an application for a mining permit and, within 30 days after the application
19 is submitted, shall determine either that the application is complete or that
20 additional information is needed. If the department determines that the application
21 is complete, the department shall notify the applicant in writing of that fact within
22 the 30-day period and the date on which the department sends the notice is the day
23 on which the application is administratively complete.

24 (b) If the department determines under par. (a) that an application is
25 incomplete, the department shall notify the applicant in writing and may make one

1 request for additional information during the 30-day period specified in par. (a).
2 Within 10 days after receiving additional requested information from the applicant,
3 the department shall notify the applicant in writing as to whether it has received all
4 of the requested information. The day on which the department sends the 2nd notice
5 under this paragraph is the day on which the application is administratively
6 complete.

7 (c) If the department fails to meet the 30-day time limit under par. (a) or the
8 10-day time limit under par. (b), the application is administratively complete on the
9 last day of the 30-day time limit or 10-day time limit.

10 (d) The department may request additional information needed to process a
11 mining application from the applicant after the application is administratively
12 complete, but the department may not delay the determination of administrative
13 completeness based on a request for additional information.

14 **(3) NOTICE OF ADDITIONAL APPROVALS.** Within 30 days after the mining permit
15 is administratively complete under sub. (2), the department shall notify the
16 applicant in writing of any approval required for the construction or operation of the
17 mining site that was not previously identified by the department.

18 **(3m) RECEIPT OF CERTAIN APPROVALS.** If a storm water discharge permit under
19 s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch.
20 II of ch. 281 to implement 33 USC 1341 (a) is needed for a mining operation, the
21 person applying for the mining permit may apply for and be issued the permit or
22 certification.

23 **(4) PUBLIC INFORMATION AND NOTICE.** (a) The department shall make available
24 for review in the city, village, or town in which the proposed mining site is located,
25 information concerning the proposed mining, including all of the following:

1 1. The application for the mining permit, including the mining plan,
2 reclamation plan, and mining waste site feasibility study and plan of operation.

3 2. Any of the following relating to an approval other than the mining permit:

4 a. The application.

5 b. A draft approval.

6 c. Information or summaries relating to the approval.

7 3. The environmental impact statement, environmental impact report, and any
8 additional supporting information used in the department's evaluation of the
9 proposed mining.

10 4. The department's analyses and preliminary determinations relating to any
11 approval.

12 (b) The department shall distribute a notice that describes the availability of
13 the information under par. (a); the opportunity for written public comment, including
14 an invitation for the submission of written comments by any person within 45 days
15 after the date of the publication of the notice; and the date, time, and location of the
16 public informational hearing and that includes any additional information that a law
17 concerning any approval requires to be provided. The department shall publish the
18 notice as a class 1 notice under ch. 985 and shall publish notice on the department's
19 Internet site. The date on which the department first publishes the notice on its
20 Internet site shall be considered the date of the publication of the notice required to
21 be published under this paragraph. The department shall also send the notice to all
22 of the following:

23 1. The clerk of any city, village, town, or county with zoning jurisdiction over
24 the proposed mining site.

1 2. The clerk of any city, village, town, or county within whose boundaries any
2 portion of the proposed mining site is located.

3 3. The clerk of any city, village, or town, contiguous to any city, village, or town
4 within whose boundaries any portion of the proposed mining site is located.

5 4. The main public library of each city, village, town, or county with zoning
6 jurisdiction over the proposed mining site or within whose boundaries any portion
7 of the proposed mining site is located.

8 5. Any regional planning commission for the area within which the proposed
9 mining site lies.

10 6. Any state agency that the department knows is required to grant a permit
11 or other authorization necessary for the construction or operation of the proposed
12 mining project.

13 7. The federal environmental protection agency, U.S. Army Corps of Engineers,
14 and states potentially affected by the proposed discharge if a water discharge permit
15 under ch. 283 or a wetland permit that constitutes a water quality certification as
16 required by 33 USC 1341 (a) is to be considered at the public informational hearing.

17 8. The federal environmental protection agency and appropriate agencies in
18 other states that may be affected if an air pollution control permit under ch. 285 is
19 to be considered at the public informational hearing.

20 9. If a water withdrawal permit under s. 295.61 for a withdrawal of surface
21 water is to be considered at the public informational hearing, the persons specified
22 in s. 30.18 (4) (a).

23 10. If an individual permit under s. 30.12 for a structure through which water
24 transferred from the Great Lakes basin would be returned to the source watershed
25 through a stream tributary to one of the Great Lakes is to be considered at the public

1 informational hearing, the governing body of each city, village, and town through
2 which the stream flows or that is adjacent to the stream downstream from the point
3 at which the water would enter the stream.

4 11. Any person upon request. The department's notice under this subdivision
5 may be given through an electronic notification system established by the
6 department.

7 12. The applicant.

8 13. Any other person to whom the department is required to give notice of any
9 proposed determination, application, or hearing concerning an approval under the
10 laws relating to the issuance of any approval or under s. 1.11.

11 (c) The department shall coordinate the public comment period for the mining
12 permit with the public comment period for any other approval for the mining
13 operation, except that if an application for an approval is filed too late to allow public
14 comment within the public comment period for the mining permit, the department
15 shall issue separate notice, as described in par. (b), for the approval after the
16 application is filed.

17 (5) INFORMATIONAL HEARING. The department shall hold a public informational
18 hearing before it approves or denies an application for a mining permit and not less
19 than 30 days after the date of the publication of the notice under sub. (4) (b). The
20 department shall hold the public informational hearing in the county where the
21 majority of the proposed mining site is located. The department shall hold a single
22 public informational hearing covering the mining permit, all other approvals, and
23 the environmental impact statement, except that if an application for an approval
24 is filed too late to allow the application to be considered at the public informational
25 hearing for the mining permit, the department shall hold a separate public

1 informational hearing on the approval in the county where the majority of the
2 proposed mining site is located not less than 30 days after the date of the publication
3 of the notice under sub. (4) (b) for the approval. The public informational hearing
4 under this subsection is not a contested case hearing under ch. 227. At the hearing,
5 the department shall take testimony on all of the following with regard to any
6 proposed withdrawal of groundwater or surface water:

7 (a) The public rights in any body of water and the related environment that may
8 be injured by the proposed withdrawal of groundwater or surface water.

9 (b) The public benefits provided by increased employment, economic activity,
10 and tax revenues from the proposed mining operation.

11 (c) The direct and indirect social and economic costs and benefits of the
12 proposed mining operation.

13 (d) Whether the proposed withdrawal of groundwater or surface water will
14 consume nonsurplus water.

15 (e) The rights of competing users of the groundwater or surface water.

16 (f) Any other water withdrawal issues identified by the department as relevant
17 to the decision of whether to issue or deny a permit.

18 **(6) SUMMARY.** After considering the comments received under subs. (4) and (5)
19 and before acting on the application for the mining permit, the department shall
20 prepare a summary of the comments and the department's response to the
21 comments.

22 **(7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION.** (a) No more than 420
23 days after the day on which the application for a mining permit is administratively
24 complete under sub. (2), the department shall approve the application, and issue a
25 mining permit, or deny the application, in accordance with s. 295.58, unless the

1 department and the applicant agree to extend the deadline. The department and the
2 applicant may agree to not more than one extension and that extension may not
3 exceed 60 days. The department and the applicant may enter into an extension only
4 if one of the following applies:

5 1. An extension is necessary to enable the department and the U.S. Army Corps
6 of Engineers to jointly prepare their environmental impact statements.

7 2. New information or a change to the mining proposal necessitates additional
8 time to review the application.

9 (b) If the department does not comply with the deadline under par. (a),
10 including any extension agreed to by the applicant, the department shall refund the
11 fees under s. 295.73 (3) (a) and (d) that were paid by the applicant.

12 (c) If the department does not comply with the deadline under par. (a),
13 including any extension agreed to by the applicant, the applicant may bring an action
14 for mandamus in the circuit court for the county in which the majority of the proposed
15 mining site is located to compel the department to approve or deny the application.
16 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall
17 award the applicant its costs, including reasonable attorney fees, if it determines
18 that the department did not comply with the deadline under par. (a).

19 **(8) DEADLINE FOR ACTING ON OTHER APPROVALS.** (a) Except as provided in par.
20 (c), if an applicant files an application for an approval other than a mining permit
21 no later than 60 days after the day on which the application for the mining permit
22 is administratively complete under sub. (2), the department shall approve the
23 application, and issue the approval, or deny the application no later than the
24 deadline under sub. (7) (a), including any extension agreed to by the applicant.

1 (b) Except as provided in par. (c) if an applicant files an application for an
2 approval other than a mining permit more than 60 days after the day on which the
3 application for the mining permit is administratively complete under sub. (2), the
4 deadline for acting on the application is extended beyond the deadline under sub. (7)
5 (a), including any extension agreed to by the applicant, by the number of days beyond
6 the 60th day after the day on which the application for the mining permit is
7 administratively complete that the applicant files the application for the approval.

8 (c) The deadlines in pars. (a) and (b) do not apply to the application for an air
9 pollution control permit under s. 285.62 for which the department receives an
10 objection from the federal environmental protection agency under s. 285.62 (6).

11 (d) The department shall incorporate an approval other than a mining permit
12 into a single document with the mining permit, unless the application for the
13 approval was filed more than 60 days after the day on which the application for the
14 mining permit is administratively complete under sub. (2).

15 **(8m)** SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY. If an
16 applicant files an application under s. 281.346 for an approval for a withdrawal of
17 surface water or groundwater that is subject to regional review or council approval,
18 the department shall provide its technical review, as defined in s. 281.346 (1) (u), to
19 the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the
20 applicant files the application for the approval.

21 **(9)** APPLICABLE PROCEDURE. The provisions of this section and ss. 295.58 (5) and
22 (6) and 295.77 (1) and (2) concerning public notice, comment, and hearing; issuance
23 of department decisions; effective date of department decisions; and review of
24 department decisions; and the duration of approvals apply to any approval,
25 notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch.

1 I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or rules promulgated
2 under those provisions, except as provided in s. 281.343 (7r) and except that if a
3 withdrawal of surface water or groundwater is subject to regional review or council
4 approval under s. 281.346, the applicable provisions related to regional review or
5 council approval apply.

6 **295.58 Mining; department grant or denial of permit. (1) CRITERIA FOR**
7 **APPROVAL.** (a) Except as provided in sub. (2) and except with respect to property
8 specified in s. 41.41 (11), the department shall issue a mining permit if it finds all of
9 the following:

10 1. That the mining plan and reclamation plan are reasonably certain to result
11 in reclamation of the mining site consistent with this subchapter.

12 2. That the waste site feasibility study and plan of operation complies with s.
13 295.51.

14 3. That the applicant has committed to conducting the proposed mining in
15 compliance with the mining permit and any other approvals issued for the mining.

16 3m. That the proposed mining is likely to meet or exceed the regulations that
17 apply to municipal floodplain zoning ordinances contained in the uniform rules
18 promulgated by the department for preparation and implementation of municipal
19 floodplain zoning ordinances.

20 4. That the proposed mining is not likely to result in substantial adverse
21 impacts to public health, safety, or welfare.

22 5. That the proposed mining will result in a net positive economic impact in the
23 area reasonably expected to be most impacted by the mining.

24 6. That the applicant has applied for all necessary zoning approvals applicable
25 to the proposed mining.

1 (b) The department shall approve or deny an application for a mining permit
2 in writing and shall include the reasons for its decision with clarity and in detail.
3 The department may modify the applicant's proposed mining plan, reclamation plan,
4 or mining waste site feasibility study and plan of operation in order to meet the
5 requirements of this subchapter, and, as modified, approve the application. The
6 approval of the application for a mining permit constitutes the approval of the
7 mining plan, reclamation plan, and waste site feasibility study and plan of operation.
8 In its decision on the application for a mining permit, the department shall include
9 a final decision on compliance with s. 1.11 and the requirements of s. 295.53,
10 discussing all of the following:

11 1. Whether the department has considered the environmental impact
12 statement and comments received on it.

13 2. Whether the department has complied with ss. 1.11 and 295.53.

14 3. Whether, consistent with social, economic, and other essential
15 considerations, the department has adopted all practicable means within its
16 authority to avoid or minimize any harm to the environment and, if not, why not.

17 **(2) CRITERIA FOR DENIAL.** The department shall deny the mining permit if it
18 finds any of the following:

19 (a) That the site is unsuitable for mining.

20 (b) That the proposed mining may reasonably be expected to create any of the
21 following situations:

22 1. Hazards resulting in irreparable, substantial physical damage to any of the
23 following that cannot be prevented under the requirements of this subchapter,
24 avoided to the extent practicable by removal from the area of hazard, or offset by
25 purchase or by obtaining the consent of the owner:

- 1 a. A dwelling house.
- 2 b. A public building.
- 3 c. A school.
- 4 d. A church.
- 5 e. A cemetery.
- 6 f. A commercial or institutional building.
- 7 g. A public road.

8 2. Irreparable substantial environmental damage to lake or stream bodies
9 despite adherence to the requirements of this subchapter. This subdivision does not
10 apply to an activity that the department has authorized under statute, except that
11 the destruction or filling in of a lake bed may not be authorized unless it is authorized
12 under s. 295.60, 295.605, or 295.61.

13 3. Landslides or substantial deposition from the proposed mining operation in
14 stream or lake beds which cannot feasibly be prevented and which have not been
15 authorized under s. 295.60 or 295.605.

16 (c) That the applicant has violated, and continues to fail to comply with, this
17 subchapter.

18 (d) Subject to sub. (3), that the applicant, principal shareholder of the
19 applicant, or a related person has within 10 years before the application is submitted
20 forfeited a mining reclamation bond that was posted in accordance with a permit or
21 other authorization for a mining operation in the United States, unless the forfeiture
22 was by agreement with the entity for whose benefit the bond was posted and the
23 amount of the bond was sufficient to cover all costs of reclamation.

24 (e) Subject to sub. (3), that the applicant, a related person, or an officer or
25 director of the applicant has, within 10 years before the application is submitted,

1 been convicted of more than one felony for violations of laws for the protection of the
2 natural environment arising out of the operation of a mining site in the United
3 States, unless one of the following applies:

4 1. The person convicted has been pardoned for all of the felonies.

5 2. The person convicted is a related person or an officer or director of the
6 applicant with whom the applicant terminates its relationship.

7 3. The applicant included in its permit application under s. 295.47 a plan to
8 prevent the occurrence in this state of events similar to the events that directly
9 resulted in the convictions.

10 (f) Subject to sub. (3), that the applicant or a related person has, within 10 years
11 before the application is submitted, declared bankruptcy or undergone dissolution
12 that resulted in the failure to reclaim a mining site in the United States in violation
13 of a state or federal law and that failure has not been remedied and is not being
14 remedied.

15 (g) Subject to sub. (3), that, within 10 years before the application is submitted,
16 a mining permit or other authorization for mining issued to the applicant or a related
17 person was permanently revoked because of a failure to reclaim a mining site in the
18 United States in violation of state or federal law and that failure has not been and
19 is not being remedied.

20 **(3) EXCEPTION FROM DENIAL CRITERIA.** The department may not deny a mining
21 permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture,
22 permanent revocation, bankruptcy, or dissolution is a related person but the
23 applicant shows that the person was not the parent corporation of the applicant, a
24 person that holds more than a 30 percent ownership in the applicant, or a subsidiary
25 or affiliate of the applicant in which the applicant holds more than a 30 percent

1 interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy,
2 or dissolution.

3 (4) STATEMENT. The department shall send a statement as to whether the
4 applicant has satisfied the requirements of this subchapter to the applicant and to
5 the other persons specified in s. 295.57 (4) (b) 1. to 9.

6 (5) DURATION OF APPROVALS. (a) A mining permit is valid for the life of the
7 mining project, subject to the enforcement provisions under s. 295.79.

8 (b) An approval under s. 295.60 or 295.61 remains valid for the life of the mining
9 project, subject to the enforcement provisions under s. 295.79.

10 (c) An approval issued for a mining project under ch. 23, 29, 30, 31, 169, 281,
11 283, 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a
12 federal requirement limiting its duration, remains valid for the life of the mining
13 project, subject to the enforcement provisions applicable to the approval.

14 (6) EFFECTIVE DATE OF APPROVALS. A mining permit and any other approval is
15 issued upon mailing and is final and effective upon issuance.

16 (7) MERCHANTABLE BY-PRODUCTS. In a mining permit, the department shall
17 require the operator to treat merchantable by-products as refuse if after 3 years from
18 the time the merchantable by-products result from or are displaced by mining the
19 material has not been transported off the mining site, unless removal is continuing
20 at a rate of more than 12,000 cubic yards per year.

21 (8) GENERAL CONTRACTOR OR AFFILIATE. No operator may engage a general
22 contractor or affiliate to operate a mining site if the general contractor or affiliate has
23 been convicted of more than one felony for violation of a law for the protection of the
24 natural environment arising out of the operation of a mining site in the United States
25 within 10 years before the issuance of the operator's mining permit, unless the

1 general contractor or affiliate receives the department's approval of a plan to prevent
2 the occurrence in this state of events similar to the events that directly resulted in
3 the convictions.

4 **295.59 Bonds and other security. (1) SECURITY FOR RECLAMATION.** (a) Upon
5 notification that an application for a mining permit has been approved by the
6 department but before beginning mining, the operator shall furnish one of the
7 following to the department:

8 1. A bond, furnished by a surety company licensed to do business in this state,
9 conditioned on faithful performance of all of the requirements of this subchapter and
10 all rules adopted by the department under this subchapter.

11 2. Cash.

12 3. Certificates of deposit.

13 4. Government securities.

14 (b) The department shall pay to the operator interest received on certificates
15 of deposit or government securities furnished under par. (a).

16 (c) The operator shall furnish the security required under par. (a) in the amount
17 equal to the estimated cost to the state of fulfilling the reclamation plan, other than
18 the cost of long-term care of the mining waste site, in relation to the portion of the
19 mining site that will be disturbed by the end of the following year. The department
20 shall determine the estimated cost of reclamation of each mining site on the basis of
21 relevant factors, including the character and nature of the lands to be reclaimed, the
22 future suitable use of the land involved, the topography of the mining site, the
23 methods of reclamation being employed, the depth and composition of overburden,
24 and the depth of the ferrous mineral deposit being mined.

1 **(2) CERTIFICATE OF INSURANCE.** The operator shall submit a certificate of
2 insurance certifying that the applicant has in force a liability insurance policy issued
3 by an insurer authorized to do business in this state or, in lieu of a certificate of
4 insurance, evidence that the applicant has satisfied state or federal self-insurance
5 requirements, covering all mining operations of the operator in this state and
6 affording personal injury and property damage protection in a total amount
7 determined to be adequate by the department but not more than \$1,000,000 and not
8 less than \$50,000.

9 **(2m) PROOF OF FINANCIAL RESPONSIBILITY FOR LONG-TERM CARE OF MINING WASTE**
10 **SITE.** An operator shall maintain proof of financial responsibility ensuring the
11 availability of funds for compliance with the long-term care requirements specified
12 in the waste site feasibility study and plan of operation for a period of 40 years after
13 closing of the mining waste site. The operator shall furnish the proof of financial
14 responsibility to the department in one of the following forms:

15 (a) A bond.

16 (b) Cash.

17 (c) Certificates of deposit.

18 (d) Government securities.

19 (e) Insurance.

20 **(3) WRITTEN AUTHORIZATION TO MINE.** Upon approval of the operator's bonds or
21 other security under subs. (1) and (2m), mining application, and certificate of
22 insurance, the department shall issue written authorization to begin mining at the
23 permitted mining site in accordance with the approved mining plan, reclamation
24 plan, and mining waste site feasibility study and plan of operation.

1 (4) RECLAMATION BOND FOR MORE THAN ONE MINING SITE. Any operator who
2 obtains mining permits from the department for 2 or more mining sites may elect,
3 at the time that the mining permit for the 2nd or any subsequent mining site is
4 approved, to post a single bond under sub. (1) in lieu of separate bonds for each
5 mining site. An operator who chooses to post a single bond under this subsection
6 shall post a bond in an amount equal to the estimated cost to the state determined
7 under sub. (1) of reclaiming all mining sites the operator has under mining permits.
8 When an operator elects to post a single bond in lieu of separate bonds previously
9 posted on individual mining sites, the department may not release the separate
10 bonds until the department accepts the new bond.

11 (5) REVIEW OF AMOUNTS. If an operator disagrees with the amount of the bonds
12 or other security that the department requires under this section, the operator may
13 seek review under s. 295.77 (3) of the amount required. The operator may post a bond
14 or other security in the amount required by the department and begin mining
15 without forfeiting its right to seek review.

16 **295.60 Impacts to wetlands. (1) DEFINITIONS.** In this section:

17 (a) “Artificial wetland” means a landscape feature where hydrophytic
18 vegetation may be present as a result of human modifications to the landscape or
19 hydrology and for which there is no prior wetland or stream history.

20 (b) “Ceded territory” means the territory in Wisconsin ceded by the Chippewa
21 Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842,
22 7 Stat. 591.

23 (c) “Federal wetland” means a wetland that is subject to federal jurisdiction
24 under 33 USC 1344.

on a mining site or

1 (d) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning
2 exists on July 1, 2012.

3 (e) "Mitigation" means the restoration, enhancement, creation, or preservation
4 of wetlands to compensate for adverse impacts to other wetlands.

5 (f) "Mitigation bank" means a system of accounting for wetland loss and
6 compensation that includes one or more sites where wetlands are restored,
7 enhanced, created, or preserved to provide credits to be subsequently applied or
8 purchased in order to compensate for adverse impacts to other wetlands.

9 (g) "On-site location" means a location that is within one-half mile of an outer
10 boundary of a mining site.

11 (h) "Practicable" means reasonably available and capable of being
12 implemented after taking into consideration cost, site availability, available
13 technology, logistics, and proximity to the proposed project site, in light of the overall
14 purpose and scope of the project.

15 (i) "Water basin" means the Lake Michigan basin, the Lake Superior basin, or
16 the Mississippi River basin or other water basin established by the department.

17 (j) "Water management unit" means a subdivision of a water basin that is
18 established on a hydrological basis by the department.

19 (k) "Water quality standard" means a wetland water quality standard specified
20 under sub. (5) or any other water quality standard set by rule under s. 281.15.

21 (L) "Wetland impact evaluation" means an evaluation of impacts to a wetland.

22 (2) WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section,
23 wetland determinations and wetland boundary delineations shall be consistent with
24 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
25 regional supplement to the manual. Any owner or lessee of land, or a holder of an

1 easement in land, may request that the department provide a wetland determination
2 or wetland boundary delineation for an application for a wetland individual permit
3 under this section or for another approval for which a wetland impact evaluation is
4 required. The department may rely on wetland determinations and wetland
5 boundary delineations made by other agencies and consultants. If the applicant has
6 provided information to the department that is identified in the manual or any final
7 regional supplement as being sufficient to make a wetland determination or a
8 delineation of boundaries, the department may visit a mining site to conduct surveys
9 or gather additional site-specific quantitative data provided that the department
10 does not discontinue the processing of the application to do so.

11 (3) SCOPE; DISCHARGES; OTHER IMPACTS. (a) *Scope*. Except as otherwise provided
12 under this section, this section applies to wetland individual permits and any other
13 approvals for which wetland impact evaluations are required.

14 (b) *Discharges of dredged or fill material*. No person may discharge dredged
15 material or fill material associated with a mining operation or bulk sampling unless
16 the discharge is authorized under a wetland individual permit issued under this
17 section or under a wetland general permit issued under s. 281.36 (3g). The
18 department may not issue a wetland individual permit unless it makes a finding
19 under sub. (6) (a) that the discharge will comply with all applicable water quality
20 standards. Section 281.36 (3g) and (11), and the rules promulgated under s. 281.36
21 (3g) and (11), apply to authorizations to proceed under general permits.
22 Notwithstanding s. 281.36 (3g) (h) 2., a person receiving authorization to proceed
23 under a wetland general permit may not proceed until a mining permit is issued.

24 (c) *Other impacts*. For an approval which requires a wetland impact evaluation
25 for an activity other than a discharge of dredged material or fill material, the

1 approval may not be issued unless the department determines that the activity will
2 comply with all applicable water quality standards.

3 (4) REVIEW BY DEPARTMENT. (a) *Avoidance or minimization of impacts.* When
4 applying for a wetland individual permit or for another approval for which a wetland
5 impact evaluation is required, an applicant shall include in the application an
6 analysis of the practicable alternatives that will avoid and minimize the adverse
7 impacts on wetland functional values and that will not result in any other significant
8 adverse environmental consequences.

9 (b) *Practicable alternatives.* The department shall review the analysis of
10 practicable alternatives included in the application under par. (a). The department
11 shall limit its review to those practicable alternatives that are located at the site of
12 the discharge or other activity and that are located adjacent to that site if the
13 applicant has demonstrated that the proposed project causing the discharge or other
14 activity will result in a demonstrable economic public benefit.

15 (c) *Assessing impacts.* In its review under this subsection, the department shall
16 consider all of the following factors when it assesses the impacts to wetland
17 functional values;

18 1. The direct impacts of the proposed discharge or other activity to wetland
19 functional values.

20 2. The cumulative impacts attributable to the proposed discharge or other
21 activity that may occur to wetland functional values based on past impacts or
22 reasonably anticipated impacts caused by similar discharges or activities in the area
23 affected by the discharge or activity.

24 3. Potential secondary impacts of the proposed discharge or other activity to
25 wetland functional values.

1 4. The impact on functional values resulting from the mitigation program
2 under sub. (8)

3 5. The net positive or negative environmental impact of the mining operation.

4 (d) *Assessing impacts; geographical scope.* In its review under this subsection,
5 the department shall evaluate whether the discharge or other activity will result in
6 a significant adverse impact to wetland functional values by doing all of the
7 following:

8 1. Comparing the functional values of the wetland with other wetlands located
9 within the boundaries of the mining site or within the same water management unit
10 as the mining site and with other waters of the state that are located in the same
11 water management unit.

12 2. Taking into consideration the floristic province in which the mining site is
13 located.

14 (e) *Method for assessing impacts.* In issuing a wetland individual permit under
15 this section or in conducting a wetland impact evaluation, the department shall
16 determine the impact of a proposed discharge or other activity upon the wetland
17 functional values by using wetland ecological evaluation methods that are jointly
18 accepted by the U.S. Army Corps of Engineers and the department and that are
19 appropriate to the affected wetland.

20 (f) *General permits.* Paragraphs (a) to (e) do not apply to authorizations to
21 proceed under a general permit issued under s. 281.36 (3g).

22 **(5) WETLAND WATER QUALITY STANDARDS.** The following wetland water quality
23 standards apply to any wetland individual permit issued under this section or to any
24 wetland impact evaluation:

1 (a) Adverse impacts to the functional values and water quality of wetlands and
2 adverse impacts to other waters of the state that are influenced by wetlands shall be
3 minimized, and any significant adverse impacts remaining after minimization shall
4 be subject to a mitigation program under sub. (8). For purposes of this section,
5 functional values consist of all of the following:

6 1. Storm and flood water storage and retention and the moderation of water
7 level fluctuation extremes.

8 2. Hydrologic functions including the maintenance of dry season streamflow,
9 the discharge of groundwater to a wetland, the recharge of groundwater from a
10 wetland to another area, and the flow of groundwater through a wetland.

11 3. Filtration or storage of sediments, nutrients, or toxic substances that would
12 otherwise adversely impact the quality of waters of the state.

13 4. Shoreline protection against erosion through the dissipation of wave energy
14 and water velocity and anchoring of sediments.

15 5. Habitat for aquatic organisms in the food web including fish, crustaceans,
16 mollusks, insects, annelids, and planktonic organisms and the plants and animals
17 upon which these aquatic organisms feed and depend upon for their needs in all life
18 stages.

19 6. Habitat for resident and transient wildlife species, including mammals,
20 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel
21 corridors, and food.

22 7. Recreational, cultural, educational, scientific, and natural scenic beauty
23 values and uses.

24 (b) All of the following shall be minimized in order to avoid significant adverse
25 impacts for the purpose of maintaining or enhancing the wetland functional values

1 identified under par. (a), and any minimization of the following must be taken into
2 account in the department's evaluation of significant adverse impacts:

- 3 1. The use of liquids, fill, or other solids or gases.
- 4 2. The presence of floating or submerged debris, oil, or other material.
- 5 3. The use of materials producing color, odor, taste, or unsightliness.
- 6 4. The presence of concentrations or combinations of substances that are toxic
7 or harmful to human, animal, or plant life.

8 5. Adverse effects on hydrological conditions necessary to support the biological
9 and physical characteristics that are naturally present in wetlands. For purposes
10 of this subdivision, the hydrological conditions include all of the following:

- 11 a. Water currents and erosion and sedimentation patterns.
- 12 b. Water temperature variations.
- 13 c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
- 14 d. The movement of aquatic fauna.
- 15 e. The pH of the wetland.
- 16 f. Water levels or elevations.
- 17 6. Adverse effects on existing habitat and populations of animals and
18 vegetation found in wetlands.

19 (6) DECISION BY DEPARTMENT. (a) The department shall make a finding that a
20 a discharge of dredged material or fill material is in compliance with all applicable
21 water quality standards and shall issue a wetland individual permit if the
22 department determines that all of the following apply:

- 23 1. The proposed project of which the discharge is a part represents the least
24 environmentally damaging practicable alternative taking into consideration
25 practicable alternatives that avoid ^{wetland} impacts to wetland functional values.

1 2. All practicable measures to minimize the adverse impacts to wetland
2 functional values will be taken.

3 3. The proposed discharge will not result in significant adverse impact to
4 wetland functional values, subject to par. (b); in significant adverse impact to water
5 quality; or in other significant adverse environmental consequences.

6 (b) Notwithstanding par. (a) 3., if significant adverse impacts to wetland
7 functional values will remain after the adverse impacts have been avoided and
8 minimized to the extent practicable, the department shall issue the permit if the
9 department determines that the remaining impacts will be compensated for under
10 a mitigation program under sub. (8).

11 (c) The department may not deny an approval for an activity for which a
12 wetland impact evaluation is required, other than a discharge of dredged material
13 or fill material, on the basis of the impacts from the activity on wetlands if the
14 department determines that all of the following apply:

15 1. The proposed project of which the activity is a part represents the least
16 environmentally damaging practicable alternative taking into consideration
17 practicable alternatives that avoid ^{wetland} impacts to wetland functional values.

18 2. All practicable measures to minimize the adverse impacts to wetland
19 functional values will be taken.

20 3. The proposed activity will not result in significant adverse impact to wetland
21 functional values, subject to par. (d); in significant adverse impact to water quality;
22 or in other significant adverse environmental consequences.

23 (d) Notwithstanding par. (c) 3., if significant adverse impacts to wetland
24 functional values will remain after the adverse impacts have been avoided and
25 minimized to the extent practicable, the department may not deny the permit on the

1 basis of the impacts from the activity on wetlands if the department determines that
2 the remaining impacts will be compensated for under a mitigation program under
3 sub. (8).

4 (e) Paragraphs (a) to (d) do not apply to authorizations to proceed under a
5 general permit issued under s. 281.36 (3g).

6 (7) FEDERAL WETLANDS. (a) For a wetland individual permit under this section
7 which involves a federal wetland, any mitigation program submitted by the
8 applicant under sub. (8) shall include all the federal mitigation measures proposed
9 by the applicant. The department shall review the federal mitigation measures and
10 shall determine whether it has reasonable assurance that these will compensate for
11 any significant adverse impacts to wetland functional values, any significant
12 adverse impacts to water quality, and any other significant adverse environmental
13 consequences. The department shall recognize all federal compensatory mitigation
14 measures as being eligible for the purpose of making this determination. If the
15 department determines that reasonable assurance exists, the department may not
16 impose any additional conditions on the permit. If the department determines that
17 reasonable assurance does not exist, it may impose conditions on the permit that are
18 in addition to required federal compensatory mitigation measures, but such
19 conditions shall be limited to those that are necessary to compensate for any
20 significant adverse impacts to wetland functional values, any significant adverse
21 impacts to water quality, and any other significant adverse environmental
22 consequences. Any conditions imposed by the department may be satisfied through
23 a mitigation program as provided in sub. (8). In imposing any conditions under this
24 paragraph, the department may not require that the number of acres to be mitigated
25 be greater than the number that is required under federal law.

that will remain after completion of the
federal mitigation measures

1 (b) A wetland individual permit issued under this section that authorizes a
2 discharge of dredged or fill material in a federal wetland constitutes water quality
3 certification as required by 33 USC 1341 (a). Any other approval issued by the
4 department for which a wetland impact evaluation is required for a federal wetland
5 constitutes water quality certification under 33 USC 1341 (a) with respect to the
6 discharges or activities affecting the federal wetland.

7 (8) (b) MITIGATION PROGRAM. (a) *Contents.* A mitigation program to compensate
8 for significant adverse impacts to functional values of wetlands shall contain
9 proposed projects for mitigation and a schedule for implementing the projects. The
10 department may not consider mitigation in determining whether to grant
11 authorization to proceed under a general permit under s. 281.36 (3g). These projects
12 may be performed by a person other than the applicant, subject to the department's
13 approval of the projects and schedule.

14 (b) *Option of applicant.* An applicant submitting a program under par. (a) may
15 submit options for mitigation. These options may include any combination of the
16 types of mitigation specified in par. (d). In preparing the program, the applicant shall
17 identify and consider mitigation that could be conducted within the same watershed
18 in which the mining site is located.

19 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
20 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
21 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
22 least one credit.

23 (d) *Sequence; types of mitigation.* If it is not practicable or ecologically
24 preferable to conduct mitigation at an on-site location or if there is no on-site
25 location that will provide sufficient wetland acreage, the department shall allow the

1 applicant to conduct mitigation at a site other than an on-site location, subject to par.
2 (e). Mitigation under a program under par. (a) may be accomplished through any of
3 the following types:

4 1. Implementation of a project for mitigation by an applicant or other person
5 approved by the department.

6 2. Purchase of mitigation credits from a mitigation bank for a site in a
7 mitigation bank that is located anywhere in the state, subject to par. (e).

8 3. Purchase of mitigation credits from a mitigation bank established prior to
9 February 1, 2002, if the department determines that the bank sponsor is in
10 compliance with any applicable memorandum of understanding between the bank
11 sponsor and the department.

12 4. Participation in the in lieu fee subprogram, if such a subprogram is
13 established under s. 281.36 (3r) (e).

14 (e) *Ceded territory*. If a mining operation is located in whole or in part within
15 the ceded territory, any mitigation, including mitigation accomplished through the
16 purchase of mitigation bank credits and the in lieu fee subprogram that is authorized
17 or required by the department, that will be required to compensate for adverse
18 impacts to wetlands located in the ceded territory shall occur within the ceded
19 territory.

20 (9) SUBSEQUENT PROTECTION FOR WETLANDS. (a) If a wetland individual permit
21 issued under this section, or other approval that required a wetland impact
22 evaluation, authorizes a mitigation project, the person who is the holder of the permit
23 or approval shall grant a conservation easement under s. 700.40 to the department
24 or shall execute a comparable legal instrument to ensure that a wetland that is being
25 restored, enhanced, created, or preserved will not be destroyed or substantially

1 degraded by any subsequent proprietor of or holder of interest in the property on
2 which the wetland is located. The department shall suspend the mining permit if the
3 holder of the permit fails to grant the easement or execute this instrument within
4 the time limit set forth in the mining permit. If the holder subsequently grants the
5 conservation easement or executes the instrument, the department shall reinstate
6 the mining permit.

7 (b) Notwithstanding par. (a), the department shall modify or release a
8 conservation easement granted under par. (a) or shall void a comparable legal
9 instrument executed under par. (a) if all of the following apply:

10 1. The department determines that part or all of a wetland subject to the
11 mitigation project ceases to be a wetland.

12 2. The person who is required to grant the conservation easement or execute
13 the legal instrument did not contribute to the loss of the wetland specified in subd.
14 1.

15 3. Any subsequent proprietor of or holder of interest in the property on which
16 the wetland specified in subd. 1. is located did not contribute to the loss of the
17 wetland.

18 (10) EXEMPTIONS. (a) *Artificial wetlands.* All of the following artificial
19 wetlands that are associated with a mining operation or bulk sampling are exempt
20 from the wetland individual permit and mitigation requirements under this section
21 *from the general permit requirements under S. 281.36(3g),*
22 and from any requirement for any other approval for which a wetland impact
evaluation is required:

23 1. An artificial wetland that is a sedimentation or stormwater detention basin
24 or associated conveyance feature operated and maintained only for sediment
25 detention and flood storage purposes.

from the general permit requirements under s. 281.36(3g)

1 2. An artificial wetland that is an active sewage lagoon, cooling pond, waste
2 disposal pit, fish rearing pond, or landscape pond.

3 3. An artificial wetland that is an actively maintained farm drainage or
4 roadside ditch.

5 4. An artificial wetland as part of an active mining operation.

6 (b) *Other exempted activities.* All of the following activities that are associated
7 with a mining operation or bulk sampling are exempt from the wetland individual
8 permit and mitigation requirements under this section and from any requirement
9 for any other approval for which a wetland impact evaluation is required if the
10 applicant minimizes any adverse effect on the environment as a result of any of these
11 activities:

12 1. Maintenance, emergency repair, or reconstruction of damaged parts of
13 structures that are in use in a wetland.

14 2. Construction or maintenance of irrigation ditches.

15 3. Construction or maintenance of farm roads, forest roads, or temporary
16 mining roads that is performed in accordance with best management practices, as
17 determined by the department.

18 4. Maintenance of drainage ditches.

19 (c) An exemption under par. (a) or (b) does not apply to a federal wetland if the
20 exemption conflicts with 33 USC 1344.

21 (11) RELATIONSHIP TO OTHER LAWS. None of the following apply to a mining
22 operation or bulk sampling:

23 (a) Section 281.36, except as otherwise specifically provided in this section.

24 (b) Any rule promulgated under s. 281.36, except as otherwise specifically
25 provided in this section.

Handwritten scribbles on the left margin.

~~(b) Paragraphs (a) and (b) do not apply to discharges to proceed under a general permit issued under s. 281.36(3g)~~

1 (c) Any other rule promulgated by the department that relates to wetlands that
2 conflicts with this section.

3 **295.605 Impacts to navigable waters. (1) DEFINITION.** In this section,
4 “navigable water activity” means an activity for which an approval is required under
5 s. 30.12, 30.123, 30.19, 30.195, or 30.20.

6 **(2) APPROVAL REQUIRED.** No person may engage in any navigable water activity
7 associated with bulk sampling or mining unless the person has been granted an
8 approval as provided under sub. (4).

9 **(3) APPLICATION; RIPARIAN STATUS.** (a) For purposes of an approval under ss.
10 30.12, 30.123, 30.19, 30.195, and 30.20, a person who is not the owner of a piece of
11 riparian property may exercise a riparian right held by the owner of the piece of
12 riparian property if any of the following apply:

- 13 1. The person leases the piece of riparian property from the owner.
14 2. The person holds an easement on the piece of riparian property and the
15 easement authorizes the person to exercise that riparian right.

16 (b) If a person is applying for more than one approval for a navigable water
17 activity, the person may file a single application. The application shall include any
18 information requested by the department under s. 295.45 (3).

19 **(4) REQUIREMENTS.** (a) *Generally.* The department shall grant an approval for
20 a navigable water activity if the navigable water activity meets all of the following
21 requirements:

22 1. The navigable water activity will not significantly impair public rights and
23 interests in a navigable water.

24 2. The navigable water activity will not significantly reduce the effective flood
25 flow capacity of a stream.

1 3. The navigable water activity will not significantly affect the rights of
2 riparian owners or the applicant obtains the consent of the riparian owners.

3 4. The navigable water activity will not significantly degrade water quality.

4 (b) *Measures*. The person applying for the approval shall submit a plan to the
5 department containing proposed measures to meet the requirements under par. (a)
6 and a proposed schedule for implementing the measures. The plan shall include one
7 or more of the following measures:

8 1. Measures to offset significant impacts to navigable waters by providing
9 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
10 exchange for each acre of navigable waters that is significantly impacted.

11 2. Measures to improve public rights or interests in navigable waters.

12 3. Measures to offset significant impacts to water quality or quantity.

13 4. Measures to enhance flood storage.

14 5. A mitigation program as provided under s. 295.60 (8).

15 6. Conservation measures as provided in s. 295.61.

16 (bn) *Plan review; finding*. In reviewing the plan, the department may require
17 that measures that are in addition to, or in conjunction with, one or more of the
18 measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan
19 and application, if the department finds that the requirements under par. (a) will be
20 met by implementing some or all of the measures contained in the plan, the
21 department shall determine which measures shall be required, shall approve a
22 schedule for implementation, and shall grant the approval.

23 (c) *Applicability of requirements*. The requirements that are specified in par.
24 (a) 1. to 4. are in lieu of any requirements required for approvals under ss. 30.12 (3m)
25 (c), 30.123 (8) (c), 30.19 (4) (c), 30.195 (2) (c), and 30.20, including those that relate

1 to the state's or public's interests, and shall be used, in conjunction with the measures
2 required under par. (b), in any evaluation by the department pursuant to 33 USC
3 1341.

4 (5) APPROVAL CONDITIONS. The department may impose conditions in an
5 approval for a navigable water activity that it determines to be necessary to ensure
6 that the navigable water activities subject to the approval meet the requirements
7 under sub. (4) (a).

8 (6) RELATIONSHIP TO OTHER LAWS. (a) Chapter 30 and any rules promulgated
9 under that chapter apply to any navigable water activity subject to this section to the
10 extent that they do not conflict with this section, except as provided in par. (b).

11 (b) Sections 30.209 and 30.2095 and any rules promulgated under those
12 sections, do not apply to any navigable water activity that is subject to this section.

13 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

14 1. "Development or construction activity" means a waste site, structure,
15 building, fill, or other development or construction activity.

16 2. "Shoreland zoning ordinance" means a shoreland zoning ordinance or
17 regulation adopted under s. 59.692, 61.351, 62.231, or 281.31.

18 (2) (a) The department may not prohibit a development or construction activity
19 to be located in an area that would otherwise be prohibited under a shoreland zoning
20 ordinance if the development or construction activity is authorized by the
21 department as part of a mining operation covered by a mining permit under s. 295.58.

22 (b) A development or construction activity located in an area that would
23 otherwise be prohibited under a shoreland zoning ordinance does not violate the
24 applicable ordinance if the development or construction activity is authorized by the
25 department as part of a mining operation covered by a mining permit under s. 295.58.

1 No shoreland zoning variance is required for a development or construction activity
2 located as provided under this paragraph.

3 (3) A municipal floodplain zoning ordinance under s. 87.30 may not prohibit
4 development or construction activity authorized by the department as part of a
5 mining operation covered by a mining permit under s. 295.58, except to the extent
6 necessary for the municipality to which the floodplain zoning ordinance applies to
7 maintain eligibility for participation in the National Flood Insurance Program.

8 **295.61 Withdrawals of surface waters and groundwater. (1)**

9 DEFINITIONS. In this section:

10 (a) “Authorized base level of water loss” has the meaning given in s. 281.35 (1)

11 (b).

12 (b) “Environmentally sound and economically feasible water conservation
13 measures” has the meaning given in s. 281.346 (1) (i).

14 (c) “Great Lakes basin” has the meaning given in s. 281.35 (1) (d).

15 (d) “High capacity well” has the meaning given in s. 281.34 (1) (b).

16 (e) “Interbasin diversion” has the meaning given in s. 281.35 (1) (g).

17 (em) “Riparian restoration project” means a project that will restore or enhance
18 the natural beneficial uses and value of a watercourse.

19 (f) “Upper Mississippi River basin” has the meaning given in s. 281.35 (1) (j).

20 (g) Unless the context otherwise requires, “use” includes dewatering.

21 (h) “Water loss” has the meaning given in s. 281.35 (1) (L).

22 (i) “Withdrawal” has the meaning given in s. 281.35 (1) (m).

23 (2) PERMIT REQUIRED. No person may engage in any withdrawal or use of surface
24 water as part of a mining operation or bulk sampling, including a withdrawal or use
25 associated with a system or plant under s. 281.41, unless the person has been issued

1 a water withdrawal permit under this section. No person may engage in any
2 withdrawal or use of groundwater as part of a mining operation or bulk sampling if
3 the capacity and rate of withdrawal of all wells involved in the withdrawal of
4 groundwater or in the dewatering of mines exceeds 100,000 gallons each day ~~or if the~~
5 withdrawal or use ~~is~~ associated with a system or plant under s. 281.41 unless the
6 person has been issued a water withdrawal permit under this section.

7 (3) PERMIT APPLICATION. (a) *Application.* Any person applying for a water
8 withdrawal permit is required to submit only one application. A person applying for
9 such a permit need not be a riparian owner. An application for a water withdrawal
10 permit shall include any information requested by the department under s. 295.45
11 (3).

12 (am) *Applicant status.* 1. A person is not required to be the owner of a piece
13 of riparian property in order to obtain a permit to withdraw surface water from that
14 piece of riparian property if any of the following applies:

- 15 a. The person leases the piece of riparian property from the owner.
16 b. The person holds an easement on the piece of riparian property.
17 2. A person is not required to be the owner of a piece of property in order to
18 obtain a permit to withdraw groundwater from that piece of property if any of the
19 following applies:

- 20 a. The person leases the piece of property from the owner.
21 b. The person holds an easement on the piece of property.
22 c. The person has obtained permission from the owner to withdraw
23 groundwater from that piece of property.

24 (b) *Siting analysis.* If withdrawal of water at a mining operation or for bulk
25 sampling will involve one or more high capacity wells, the department shall require

1 an applicant for a water withdrawal permit to submit a siting analysis for the
2 purpose of determining the location of the high capacity wells. The analysis shall
3 include alternate proposed locations for each high capacity well. In evaluating a
4 submitted analysis, the department shall recognize there is a need for mining waste
5 sites and processing facilities, including wastewater and sludge storage or treatment
6 lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall
7 allow any high capacity well to be located so that need will be met. The department
8 shall approve the location of each high capacity well as part of the permit issued
9 under sub. (4).

10 (c) *Entry to land.* After an application for a water withdrawal permit has been
11 submitted under this section, the applicant may enter any land from which the
12 applicant proposes to withdraw water or use water for the purpose of making any
13 surveys required for the mining operation or bulk sampling, but no work may be
14 commenced necessary for the mining operation or the bulk sampling until the
15 department issues the permit under this section.

16 (4) PERMIT ISSUANCE. (a) *General requirements.* The department shall issue
17 a water withdrawal permit if it determines that the withdrawal or use of the surface
18 water or groundwater meets all of the following requirements:

19 1. The proposed withdrawal and uses of the water are substantially consistent
20 with the protection of public health, safety, and welfare and will not be significantly
21 detrimental to the public interest.

22 2. The proposed withdrawal and uses of the water will not have a significant
23 adverse impact on the environment and ecosystem of the Great Lakes basin or the
24 Upper Mississippi River basin.

1 3. The proposed withdrawal and use of the water will not be significantly
2 detrimental to the quantity and quality of the waters of the state.

3 4. The proposed withdrawal and use of the water will not significantly impair
4 the rights of riparian owners or the applicant obtains the consent of the riparian
5 owners.

6 5. The proposed withdrawal and use of the water will not result in significant
7 injury to public rights in navigable waters.

8 6. If the withdrawal or the use of the water will result in an interbasin
9 diversion, the requirements of s. 281.35 (5) (d) 7. are met.

10 7. The proposed withdrawal or use of the water will comply with any
11 requirements imposed by the department under par. (cm).

12 (b) *Conservation measures.* The person applying for the permit shall submit
13 a plan to the department containing proposed conservation measures to meet the
14 requirements under par. (a) and a proposed schedule for implementing the
15 measures. The plan shall include one or more of the following measures:

16 1. Environmentally sound and economically feasible water conservation
17 measures.

18 2. Restoration of hydrologic conditions and functions of the source watershed,
19 or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration
20 of the hydrologic conditions and functions of that stream.

21 3. Protection of important upland groundwater recharge areas.

22 4. Stabilization of shorelands.

23 5. Restoration or enhancement of the natural beneficial uses and values of a
24 stream or river.

1 6. Implementation of any feasible methods to offset impacts to water quality
2 or quantity.

3 7. Supplementation of additional water to water bodies to offset lower water
4 levels.

5 8. Taking steps to improve public rights or interests in navigable waters, if
6 navigable waters are subject to the permit.

7 9. A mitigation program as provided in s. 295.60 (8).

8 10. Measures to offset significant impacts to navigable waters by providing
9 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
10 exchange for each acre of natural navigable waters that is significantly impacted.

11 11. A riparian restoration project.

12 12. Measures as provided in s. 295.605.

13 (bn) *Plan review; finding.* In reviewing the plan, the department may require
14 that conservation measures that are in addition to, or in conjunction with, one or
15 more of the conservation measures specified in par. (b) 1. to 12. be included in the
16 plan. After reviewing the plan and application, if the department finds that the
17 requirements under par. (a) will be met by implementing some or all of the
18 conservation measures contained in the plan, the department shall determine which
19 measures shall be required, shall approve a schedule for implementation, and shall
20 issue the permit.

21 (cm) *Impacts to water supplies.* If the department determines that a proposed
22 withdrawal or use of water will result in a significant impact to a public or private
23 water supply, the department shall require the applicant to offset that impact in a
24 manner approved by the department, which may include a requirement that the

1 applicant provide a replacement water supply of similar quality or provide an
2 increased amount of water to the water supply.

3 (e) *Use of waters on nonriparian property.* Water withdrawn in accordance with
4 a water withdrawal permit may be used on nonriparian property.

5 (f) *Limits on permit denials.* If the department determines that one of the water
6 withdrawal activities subject to an application for a water withdrawal permit does
7 not meet the requirements for issuing the permit under par. (a) and will not be
8 authorized under the permit, the failure to authorize the activity may not affect the
9 department's determination as to whether to approve or deny the permit for other
10 water withdrawal activities that are subject to the application.

11 (5) PERMIT CONDITIONS. (a) The department may impose reasonable conditions
12 in a water withdrawal permit that, except as provided in par. (b), may not interfere
13 with the mining operation or bulk sampling or limit the amount of water needed for
14 the mining operation or bulk sampling and that relate to any of the following:

- 15 1. The location of the withdrawal or use.
- 16 2. The authorized base level of water loss from the withdrawal or use.
- 17 3. The dates on which or seasons during which withdrawal or use of the water
18 may occur.
- 19 4. The purposes for the withdrawal or use of the water.
- 20 5. The amount and quality of return flow required and the place of the
21 discharge.
- 22 6. The requirements for reporting volumes and rates of withdrawal and any
23 other data specified by the department.

1 7. Any other conditions that the department determines are necessary to
2 protect the environment and the public health, safety, and welfare and to ensure the
3 conservation and proper management of the waters of the state.

4 (b) If the department determines that a high capacity well that would be
5 covered by a water withdrawal permit may impair a privately owned high capacity
6 well, the department shall include in the water withdrawal permit conditions that
7 will ensure that the privately owned high capacity well will not be impaired, unless
8 the private high capacity well owner agrees to the impairment.

9 **(6) PERMIT MODIFICATIONS.** (a) 1. An operator to whom a permit has been issued
10 under this section may request a modification of any condition in the permit.

11 2. If the request for a modification under subd. 1. does not result in an increase
12 in an existing withdrawal resulting in a water loss averaging more than 2,000,000
13 gallons per day in any 30-day period above the operator's authorized base level of
14 water loss, within 30 days of receiving the request the department shall approve the
15 request and amend the permit to incorporate the modification.

16 3. a. If the request for a modification under subd. 1. results in an increase in
17 an existing withdrawal resulting in a water loss averaging more than 2,000,000
18 gallons per day in any 30-day period above the operator's authorized base level of
19 water loss, the department shall determine, using the environmental review process
20 under s. 1.11, whether it is required to prepare an environmental assessment or
21 environmental impact statement and, if so, shall prepare an environmental
22 assessment or an environmental impact statement. If the department determines,
23 using the environmental review process under s. 1.11, that the operator must
24 prepare an environmental impact report, the department may only request
25 information in the environmental impact report that relates to decisions that the

1 department makes under this section related to the permit and the department shall
2 limit its analysis to an evaluation of the request for the modification.

3 b. The department shall publish a class 1 notice, under ch. 985, and shall
4 publish notice on the department's Internet site, of the availability of information
5 about a request to which this subdivision applies, its proposed decision on the
6 request, the opportunity to comment within 30 days after the date of the publication
7 of the notice, and the opportunity to request a public informational hearing. The
8 department shall also provide the notice to the applicant, the persons specified in s.
9 30.18 (4) (a), and if the modification involves a structure through which water
10 transferred from the Great Lakes basin would be returned to the source watershed
11 through a stream tributary to one of the Great Lakes, the governing body of each city,
12 village, and town through which the stream flows or that is adjacent to the stream
13 downstream from the point at which the water would enter the stream. The
14 department's notice to interested persons under this subd. 3. b. may be given through
15 an electronic notification system established by the department. The date on which
16 the department first publishes notice on its Internet site shall be considered the date
17 of the publication of the notice required to be published under this subd. 3. b.

18 c. Within 180 days of receiving a request to which this subdivision applies, the
19 department shall approve or deny as provided in sub. (4) the request and, if it
20 approves the request, shall amend the permit to incorporate the modification.

21 (b) 1. The department may propose modifications to any of the conditions in the
22 water withdrawal permit that it determines to be necessary to ensure compliance
23 with the standards in sub. (4). If it proposes a modification, the department shall
24 determine, using the environmental review process under s. 1.11, whether it is
25 required to prepare an environmental assessment or environmental impact

1 statement and, if so, shall prepare an environmental assessment or an
2 environmental impact statement. If the department determines, using the
3 environmental review process under s. 1.11, that the operator must prepare an
4 environmental impact report, the department may only request information in the
5 environmental impact report that relates to decisions that the department makes
6 under this section related to the permit and the department shall limit its analysis
7 to an evaluation of the proposed modification.

8 2. The department shall publish a class 1 notice, under ch. 985, and shall
9 publish notice on the department's Internet site, of the availability of information
10 about a proposed modification under this paragraph, the opportunity to comment
11 within 30 days after the date of the publication of the notice, and the opportunity to
12 request a public informational hearing. The department shall also provide the notice
13 to the applicant, the persons specified in s. 30.18 (4) (a), and if the modification
14 involves a structure through which water transferred from the Great Lakes basin
15 would be returned to the source watershed through a stream tributary to one of the
16 Great Lakes, the governing body of each city, village, and town through which the
17 stream flows or that is adjacent to the stream downstream from the point at which
18 the water would enter the stream. The department's notice to interested persons
19 under this subdivision may be given through an electronic notification system
20 established by the department. The date on which the department first publishes
21 notice on its Internet site shall be considered the date of the publication of the notice
22 required to be published under this subdivision.

23 3. The department may not impose the modification until after the end of the
24 public comment period under subd. 2.

1 4. Any modified condition under this paragraph may not interfere with the
2 mining operation or limit the amount of water needed for the mining operation if the
3 holder of the water withdrawal permit is implementing any conservation measures
4 that are applicable under the permit.

5 **(7) RELATIONSHIP TO OTHER LAWS.** None of the following apply to water
6 withdrawal or use that is associated with mining operations or bulk sampling:

7 (a) Sections 30.18, 281.34, and 281.35 and any rules promulgated under those
8 sections, except as specifically provided in this section.

9 (b) Any provision of ch. NR 812, Wis. Adm. Code, that conflicts with this section,
10 except that s. NR 812.08, Wis. Adm. Code, does not apply to water withdrawal or use
11 that is associated with mining operations or bulk sampling.

12 **(8) DAMAGE CLAIMS.** (a) As used in this subsection, “person” does not include
13 a city, village, or town.

14 (b) A person claiming damage to the quantity or quality of the person’s private
15 water supply caused by bulk sampling or mining may file a complaint with the
16 department and, if there is a need for an immediate alternative source of water, with
17 the city, village, or town where the private water supply is located. The department
18 shall conduct an investigation and if the department concludes that there is reason
19 to believe that the bulk sampling or mining is interrelated to the condition giving rise
20 to the complaint, it shall schedule a hearing.

21 (c) The city, village, or town in which is located the private water supply that
22 is the subject of a complaint under par. (a) shall, upon request, supply necessary
23 amounts of water to replace the water formerly obtained from the damaged private
24 supply. Responsibility to supply water begins at the time the complaint is filed and

1 ends at the time the decision of the department made at the conclusion of the hearing
2 is implemented.

3 (d) If the department concludes after the hearing that bulk sampling or mining
4 is the principal cause of the damage to the private water supply, it shall issue an order
5 to the operator requiring the provision of water to the person found to be damaged
6 in a like quantity and quality to that previously obtained by the person and for a
7 period of time that the water supply, if undamaged, would be expected to provide a
8 beneficial use, requiring reimbursement to the city, village, or town for the cost of
9 supplying water under par. (c), if any, and requiring the payment of compensation
10 for any damages unreasonably inflicted on the person as a result of damage to the
11 person's water supply. The department shall order the payment of full compensatory
12 damages up to \$75,000 per claimant. The department shall issue its written findings
13 and order within 60 days after the close of the hearing. Any judgment awarded in
14 a subsequent action for damages to a private water supply caused by bulk sampling
15 or mining shall be reduced by any award of compensatory damages previously made
16 under this subsection for the same injury and paid by the operator. The department
17 shall change the dollar amount under this paragraph annually, beginning with 1978,
18 according to the method under s. 70.375 (6). Pending the final decision on any appeal
19 from an order issued under this paragraph, the operator shall provide water as
20 ordered by the department. The existence of the relief under this section is not a bar
21 to any other statutory or common law remedy for damages.

22 (e) If the department concludes after the hearing that bulk sampling or mining
23 is not the cause of any damage, reimbursement to the city, village, or town for the
24 costs of supplying water under par. (c), if any, is the responsibility of the person who
25 filed the complaint.

1 (f) Failure of an operator to comply with an order under par. (d) is grounds for
2 suspension or revocation of a mining permit or any approval required for bulk
3 sampling.

4 (9) COSTS REIMBURSED. (a) Costs incurred by a city, village, or town in
5 monitoring the effects of bulk sampling or mining on surface water and groundwater
6 resources, in providing water to persons claiming damage to private water supplies
7 under sub. (8) (c), or in retaining legal counsel or technical consultants to represent
8 and assist the city, village, or town appearing at the hearing under sub. (8) (b) are
9 reimbursable through the investment and local impact fund under s. 15.435.

10 (b) Any costs paid to a city, village, or town through the investment and local
11 impact fund under par. (a) shall be reimbursed to the fund by the city, village, or town
12 if the city, village, or town receives funds from any other source for the costs incurred
13 under par. (a).

14 (c) If an order under sub. (8) (d) requiring the operator to provide water or to
15 reimburse the city, village, or town for the cost of supplying water is appealed and
16 is not upheld, the court shall order the cost incurred by the operator in providing
17 water or in reimbursing the city, village, or town pending the final decision to be
18 reimbursed from the investment and local impact fund under s. 15.435.

19 **295.62 Mining waste site construction and completion reports.** (1) An
20 operator shall construct a mining waste site substantially in accordance with the
21 approved mining waste site feasibility study and plan of operation.

22 (2) The operator shall inspect the mining waste site before it is used and ensure
23 that all associated structures are in substantial compliance with the mining waste
24 site feasibility study and plan of operation. The operator shall have a professional
25 engineer, registered as such under ch. 443, document mining waste site construction

1 and render an opinion as to whether the mining waste site has been constructed in
2 substantial conformance with the mining waste site feasibility study and plan of
3 operation. The engineer may use aerial or ground photographs to document the
4 inspection, but photographs do not in themselves constitute compliance with this
5 subsection. The operator shall maintain a complete file describing the items
6 inspected and their condition.

7 (3) An operator shall notify the department in writing when the mining waste
8 site has been constructed in substantial compliance with the mining waste site
9 feasibility study and plan of operation.

10 (4) (a) Within 5 business days of receipt of written notice from an operator that
11 the mining waste site has been constructed in substantial compliance with the
12 mining waste site feasibility study and plan of operation, the department shall either
13 review and inspect the mining waste site to ensure that it was constructed according
14 to the approved mining waste site feasibility study and plan of operation or notify the
15 operator that the department will not conduct a review and inspection before
16 disposal of mining waste in the mining waste site. Within 3 business days of any
17 review and inspection, the department shall notify the operator that the mining
18 waste site may be used for the disposal of mining waste or identify all steps that must
19 be completed to bring the mining waste site into substantial compliance with the
20 mining waste site feasibility study and plan of operation. After the operator
21 completes the steps, the operator shall notify the department that the steps have
22 been completed.

23 (b) An operator may dispose of mining waste in a mining waste site after one
24 of the following occurs:

1 1. The operator receives notice from the department under par. (a) that the
2 department will not conduct a review and inspection before disposal of mining waste
3 in the mining waste site.

4 2. The operator receives notice from the department under par. (a) that the
5 mining waste site may be used for the disposal of mining waste.

6 3. The operator provides notice to the department under par. (a) that any steps
7 required by the department to be completed under par. (a) have been completed.

8 **295.63 Modifications; reporting.** (1) (a) An operator at any time may
9 request a change to a mining permit, the mining plan, the reclamation plan, or the
10 mining waste site feasibility study and plan of operation for any mining site that the
11 operator owns or leases, or request cancellation of the mining permit for any or all
12 of the unmined part of a mining site. The operator shall submit an application for
13 the change or cancellation in the form of a letter giving notice to the department of
14 the proposed change or cancellation and shall identify in the letter the tract of land
15 to be affected by a change in the mining plan, reclamation plan, or mining waste site
16 feasibility study and plan of operation or to be removed from the permitted mining
17 site.

18 (b) The department shall grant a request under par. (a) unless it determines
19 that the requested change makes it impossible for the permit holder to substantially
20 comply with the approved mining plan, reclamation plan, or mining waste site
21 feasibility study and plan of operation. If the department determines that the
22 requested change would make substantial compliance impossible, it shall follow the
23 procedure in sub. (3).

24 (c) If the request under par. (a) is to cancel any or all of the unmined part of a
25 mining site, the department shall ascertain, by inspection, if mining has occurred on

1 the land. If the department finds that no mining has occurred, the department shall
2 order release of the bond or other security posted for the land being removed from
3 the permitted mining site and cancel or amend the operator's written authorization
4 to conduct mining on the mining site. The department may not approve the removal
5 of land where mining has occurred from a permitted mining site, or release that land
6 from the bond or other security under this subsection, unless the operator has
7 completed reclamation to the satisfaction of the department.

8 (2) The operator shall furnish the department with a report for each mining
9 site within 30 days after the end of every 12-month period after issuance of the
10 mining permit, within 30 days after completion of all mining at the mining site, and
11 within 30 days after completion of the mining plan and of the reclamation plan,
12 describing any reclamation work accomplished, or experimental reclamation work
13 performed, during the preceding year. The operator shall include in the reports an
14 annual plan map, color-coded and with a legend, showing all of the following, as of
15 December 31 of the previous year, or as near to December 31 of the previous year as
16 mining operations permit:

17 (a) Location and boundary of the mining area.

18 (b) Any mine mill.

19 (c) Any open pit.

20 (d) Stockpiles of overburden.

21 (e) Stockpiles of waste rock.

22 (f) Ferrous ore stockpiles.

23 (g) Streams, lakes, and reservoirs.

24 (h) Tailings basins.

25 (i) Roads.